

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PATRICIA SANATO,)	
o/b/o DANIEL SANATO,)	
deceased)	
)	
Plaintiff,)	No. 99 C 6236
)	
vs.)	Magistrate Judge Schenkier
)	
KENNETH S. APFEL,)	
Commissioner of Social Security,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

This case, like many social security appeals, presents us with a sad story: in this case, the story of a man who lost his job, his health, and ultimately his life. Before he died, Daniel Sanato, the original claimant, applied for -- but was denied -- social security benefits. The plaintiff, Patricia Sanato (“Ms. Sanato”), the mother of the deceased claimant, seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the August 20, 1999 final agency decision by the Social Security Administration Commissioner (“Commissioner”), which upheld the denial of disability insurance benefits (“DIB”) and supplemental security income (“SSI”) by the Administrative Law Judge (“ALJ”) on July 29, 1998. Ms. Sanato has filed a motion for summary judgment (doc. # 16-1) seeking reversal of the Commissioner’s decision and an award of benefits, dating from the onset of her son’s alleged disability to the date of his death on May 20, 1999; alternatively, she seeks a reversal and remand for further proceedings. The Commissioner has filed a cross-motion for summary judgment seeking affirmance of the decision (doc. # 19-1). For the reasons

discussed below, the Commissioner’s decision is reversed and remanded for further proceedings pursuant to Sentence 4, 42 U.S.C. § 405(g). *See also Melkonyan v. Sullivan*, 501 U.S. 89, 101-102 (1991).¹

I.

A. Background.

1. Personal Characteristics.

Daniel Sanato was born on May 13, 1953 (R.40) in Gurnee, Illinois, in the house where he lived all of his life with his mother (R. 40). He was the youngest of two children, and his parents ultimately separated (R. 167). Mr. Sanato graduated from Warren Township High School, in Gurnee, Illinois in 1972 (R. 40), with a 1.486/4.0 grade point average, and an academic ranking of 211 out of 247 students in his class (R.186). Mr. Sanato never married (R. 40), and he had no children (R. 167). He died on May 20, 1999, at 46 years of age, from cirrhosis of the liver and congestive heart failure (R. 8).

Descriptions of Mr. Sanato in the administrative record before the Court reveal that Mr. Sanato was approximately five feet six inches tall and he weighed approximately 204 lbs. (R. 164). During a psychiatric assessment on November 21, 1996, Dr. John Dalton described him as obese, balding, with gray hair, a long white beard, and prescription eyeglasses that were very old (R. 166-67). Various doctors described Mr. Sanato in their assessments as “a somewhat unusual and odd behaving man” (R. 138), who was depressed and angry (R. 205), and who had a “superficial” (R. 138) and “flat” affect (R. 205); “blunt” speech (R. 138); a “definite disconnected quality” (R. 138); and a “guarded” presentation, as if wanting to “avoid disclosure (R. 170).

¹By the parties’ consent, on February 9, 2000, this case was reassigned to this Court, pursuant to 28 U.S.C. § 636(c)(1) and Northern District of Illinois Local Rule 73.1(b), for this Court to conduct any and all proceedings in this case, and to enter final judgment (doc. #s 12-1 and 13-1).

2. Work History.

Mr. Sanato worked consistently from January 1978 to February 1992 at the Dexter paint company (R. 82). For the first ten years of his employment at Dexter, Mr. Sanato ground pigment to make and mix paint (R. 45-46). This job required him to stand all day, run pigment through a paint machine and handle paint tanks weighing between 14 and 500 pounds (R. 46). Dexter paid for plaintiff to attend computer classes at a community college (R. 40-41), and for approximately the last four years of his employment at Dexter, Mr. Sanato worked as a full-time computer inventory clerk (R. 44-45), where he was able to sit and stand throughout the day (R. 46). By the end of his tenure at Dexter, Mr. Sanato was paid \$12 per hour, and he supervised 10-12 people who filled out “batch tickets” (R. 82).

In February 1992, Mr. Sanato was “laid off” due to a reorganization at Dexter (R. 44). Mr. Sanato began to drink heavily after this lay off, because he could not find another job (R. 50).

Mr. Sanato remained unemployed from February 1992 until July 1993, when he obtained a job as a janitor at Greenbay School in West Chicago. Mr. Santo held that job for seven months, from July 1993 to February 1994, at which time he was fired (R. 41-42). Mr. Sanato testified that he was fired because he could not perform all of his job duties (R. 42). Although Mr. Sanato was left-handed (R. 18, 40), he testified that the inability to perform his janitorial duties was the direct result of his inability to lift and carry with his right (non-dominant) hand, and dizziness that made him unable to work on ladders (R. 42-43). Mr. Sanato attributed the dizziness and his vulnerability to passing out to his unmedicated diabetic condition (R. 42).

After his termination from the janitorial position, Mr. Sanato never again was employed. After his death in 1999, Ms. Sanato listed on the death certificate her son’s occupation as a “paint mixer” at a “paint

factory” (R. 8) – even though he had not held that job since February 1992. As of the time of the hearing on June 5, 1997, Mr. Sanato had no source of income (R. 41), although he did receive food stamps in the amount of \$115 per month (R. 41).

B. Procedural History.

On October 26, 1994, Mr. Sanato filed his application for SSI and DIB (R. 65-66), alleging the onset date for his disability as February 10, 1994 (R. 65-66, 100, 123). Mr. Sanato’s application was denied initially (R. 67-68), and on reconsideration that denial was reaffirmed (R. 73). Mr. Sanato requested an administrative hearing on July 27, 1995, which was held on June 5, 1997 (R. 14). The ALJ’s decision finding Mr. Sanato not disabled and denying Mr. Sanato both SSI and DIB benefits was issued on July 29, 1998 (R. 12-26). On August 20, 1999, the Appeals Council affirmed the ALJ’s decision, making this the Commissioner’s final decision (R. 4-5).

C. The Administrative Record.

At the administrative hearing, Mr. Sanato testified that his disabilities included an array of physical impairments (cirrhosis of the liver, diabetes, high blood pressure, hypertension and an injury to his right hand) (R. 47, 50, 53-54, 165), and psychological impairments (depression, personality disorder, and poor impulse control, among others) (R. 153-163). Mr. Sanato also testified that he had previously suffered from alcoholism, but had not had a drink since August 1995, after he finished a treatment program at the Gateway Foundation (R. 53, 146-163).

1. Medical Conditions: Physical Impairments.

While he was working at Dexter, Mr. Sanato had health insurance (R. 46). This insurance covered his medications for high blood pressure, and -- for the few months after his lay off from Dexter -- it covered the medications he needed to treat his diabetic condition (R. 46, 50). Mr. Sanato was diagnosed with diabetes shortly after his lay off from Dexter in 1992, while he was attending an Alcoholic Treatment Center ("ATC"). When Mr. Sanato's health insurance ran out, he could no longer afford medication for either his diabetes or his high blood pressure (R. 46- 47, 61) and, as a result, those conditions went unmedicated and unchecked (R.46-47). Mr. Sanato testified that after he was laid off from Dexter, he began to drink heavily, and he became depressed, dizzy and had tingling pain in his legs (R. 50, 51-53, 60-61). Mr. Sanato also testified to having low energy, which required him to sleep 10-14 hours per day (R. 51, 55).

On January 31, 1993, several months before his brief stint as a janitor, Mr. Sanato was stabbed in the right hand with a knife by his girlfriend (R. 16, 44, 47-49). The knife wound, which ruptured a tendon in Mr. Sanato's right hand, was surgically repaired by doctors at Saint Therese Medical Center in Waukegan, Illinois (R.129-136). According to Mr. Sanato, however, the surgery did not remedy the residual pain that Mr. Sanato suffered in his right hand from this stab wound (R. 47-48). Mr. Sanato testified that he experienced constant pain from the wound and cramping in this hand two or three times a day for about 10-15 minutes (R. 48). For pain relief, Mr. Sanato took over the counter pain medication (R. 48).

Mr. Sanato also testified that as a result of the stab wound, the use of his right hand was limited. For example, he testified that he could not always carry a glass or plate; and he could not always dress himself by zipping up a jacket or buttoning his pants (R. 49). However, a residual functional capacity

assessment performed by Dr. Julius Villaflor in June 1995 indicated that Mr. Sanato could lift 50 pounds occasionally and 25 pounds frequently; could do unlimited pushing or pulling; and did not have any manipulative limitations with his hands (R. 107, 109). Moreover, while Mr. Sanato complained about limits on his ability to use his right hand in an assessment by Dr. John Dalton in November 1996 (R. 167), he denied having such limitations during a July 1997 assessment by Dr. Alvaro Rios (R. 204).

While at the hospital for this surgery, doctors there performed a physical assessment of Mr. Sanato, and diagnosed him as suffering from hypertension, diabetes, obesity, and “acute alcohol intoxication” (R. 130). And, indeed, the records submitted at the administrative hearing are replete with references to Mr. Sanato’s chronic use of alcohol (R. 78, 85, 90, 93-94, 96, 137-139, 140, 146-63, 164-65, 167-68). For most of his life, Mr. Sanato drank heavily. Mr. Sanato’s problem with alcohol began at the age of 14 or 15 (R. 93, 168), and after he lost his job at Dexter, he was drinking up to a liter of brandy and a case of beer every day (R. 54). In fact, Mr. Sanato often passed out from drinking too much (R. 96). Various medical reports diagnosed Mr. Sanato as an alcoholic until August 1995, when he successfully completed treatment at Gateway Foundation (R. 53, 167).

However, while he was at Gateway, Mr. Sanato was diagnosed with cirrhosis of the liver. Although that diagnosis apparently spurred Mr. Sanato to stop drinking (R. 53-54), the liver condition proved to be his ultimate demise. Mr. Sanato died of cirrhosis of the liver on May 20, 1999 (R. 8).

2. Medical Conditions: Psychological Impairments.

In addition to his various physical problems, Mr. Sanato experienced depression and low energy that he attributed to a variety of causes: abuse at the hands of his father, who used to pound his head against a wall (R. 167); alcoholism (R. 55); and the loss of his job of fourteen years at Dexter (R. 44, 50),

and his inability to obtain or hold another steady job thereafter (R. 54-55). Mr. Sanato's psychological problems apparently predated his job loss with Dexter, because Mr. Sanato indicated that Dexter had sent him to see a mental health professional even before he was laid off (R. 168). Mr. Sanato also reported that he has a long history of fighting, especially when he drank (R. 94, 167). During and after his tenure at Dexter, Mr. Sanato was arrested several times for battery, with one conviction (R. 167). During his Gateway Assessment in August 1995, Mr. Sanato stated that he "fe[lt] hopeless about life" (R. 162). And, indeed, the medical records submitted at the administrative hearing are also replete with references to Mr. Sanato's "personality disorder" (with "schizoid features"), volatility and mood disorders and substance abuse problem (*e.g.*, R. 86, 90, 96, 114, 119, 121, 123, 125, 137-39, 140, 146-163, 164-65, 166-67).

In January 1995, Dr. David Benson opined that Mr. Sanato had a personality disorder with schizoid features, and a "definite disconnected quality" about him (R. 138). Dr. Benson also opined that he did not believe Mr. Sanato would have been capable of managing any benefits given to him while he was drinking (R. 173-39).

In a June 1995 assessment, Dr. Villaflor reported that Mr. Sanato's personality disorder was characterized by "intense and unstable interpersonal relationships and impulsive damaging behavior" with "some schizoid features" (R. 119). Dr. Villaflor also opined that Mr. Sanato had a moderate degree of limitation regarding social functioning, and a substance abuse/addiction disorder (R. 114, 121, 123-24).

Another June 1995 psychological assessment, this one performed by Dr. Jerrold Heinrich, PhD, indicated that Mr. Sanato had alcohol dependence and had difficulty remembering detailed instructions (R. 104). This report is consistent with Mr. Sanato's own assessment of himself (R. 56).

In June 1995, Dr. Karen A. Leone also examined Mr. Sanato and concluded that he suffered from diabetes, hypertension, tendon laceration of the right hand, hip and leg pain and alcoholism (R. 142). Dr. Leone also concluded that Mr. Sanato, despite the lacerated tendon in his right hand, could perform gross and fine manipulations bilaterally (*Id.*).

In August 1995, Dr. Y. Allian, a medical examiner for the Illinois Department of Public Aid, examined Mr. Sanato, and he concluded that Mr. Sanato had a twenty to fifty percent reduced capacity to pull, bend, turn, climb, stop and push, and a twenty percent reduced capacity to perform the physical activities of daily living, in particular, the ability to walk, sit, and stand (R. 165). Dr. Allian further concluded that Mr. Sanato had a full capacity in finger dexterity with his right and left hand, as well as gross (grasping) and fine manipulations (*Id.*). Dr. Allian further concluded that Mr. Sanato had full capacity in his ability to speak and travel, and that Mr. Sanato was capable of lifting up to 10 pounds during a 40 hour work week. Dr. Allian made no findings regarding Mr. Sanato's mental impairments (perhaps because he noted his specialties as thoracic, vascular and general surgery medicine), but he did diagnose Mr. Sanato as a diabetic and an alcoholic who suffered from cirrhosis and hypertension (*Id.*).

In November 1996, Dr. Dalton reported that Mr. Sanato "was appropriately oriented to person, place and time"; did not have a history of hallucinations or delusions and "did not exhibit any formal thought disorder"; and did not have "any compelling indications of serious impairment in memory"; but, he appeared to lack "motivation" to "perform well" on his IQ test (R. 170). Dr. Dalton assessed Mr. Sanato as having "fair" ability to deal with the public; interact with supervisors; deal with work stresses; understand, remember and carry out complex job instructions; behave in an emotionally stable manner; and demonstrate reliability (R. 178-79). A "fair" rating means that the ability to function in these respects is "seriously limited

but not precluded,” which is neither the highest or lowest rating available (R. 178). Dr. Dalton also diagnosed Mr. Sanato as having a personality disorder with schizoid and passive aggressive features, as well as a somatoform disorder,² and chronic alcohol dependence (R. 139, 171).

In July 1997, Dr. Alvaro Rios (“Dr. Rios”) reported that although Mr. Sanato appeared alert, oriented, non-delusional, non-homicidal and non-suicidal, his “[a]ffect was flat and mood depressed” (R. 205). Dr. Rios also noted that Mr. Sanato was only marginally cooperative, and “seemed to be very angry” (R. 205). Dr. Rios concluded that Mr. Sanato’s concentration was good, his intellect average, his memory (immediate, remote and recent) was within normal limits, and his judgment and insight fair (R. 205). Dr. Rios also concluded, based on his observations, that Mr. Sanato would have been capable of responsibly managing funds in his own interest (R. 205).

Mr. Sanato’s own testimony and handwritten notes in the record indicate that he was somewhat delusional, in spite of Dr. Rios’s and Dr. Dalton’s statements that Mr. Sanato, at the time of their examinations of him, had “no hallucinations or delusions” (R.170, 205). For example, Mr. Sanato reported a belief that the “devil” was “after him”; that he “hears voices” and “sees things” when “he drinks”; and that he was “suicidal” and “thinks of dying at night from the pain” (R. 93, 138). Mr. Sanato also indicated that he wanted “to be someone else” when he watched television (R. 94). Dr. Benson confirmed that Mr. Sanato had “decided referential thinking, believing people on the street may know something about him” (because his girlfriend -- who stabbed him -- may have told them about him) (R. 138).

²Somatoform disorders are characterized by multiple bodily complaints with no clinical correlation (*i.e.*, physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms). *See* 20 C.F.R. Pt. 220, App. 1 § 12.07.

C. The ALJ's Decision.

The ALJ's written decision (R. 14-26), dated July 29, 1998, began by finding that Mr. Sanato had satisfied the "insured status" requirements of Title II, as amended -- requirements that are necessary to claim entitlement to social security and disability benefits under 42 U.S.C. §§ 216(i) and 223 (R. 15). In particular, the ALJ found that: Mr. Sanato "filed applications for disability insurance benefits and supplemental security income on October 26, 1994, alleging disability since February 10, 1994 due to a bad hand, diabetes, and alcoholism" (R. 15). The ALJ further found that Mr. Sanato "meets the disability insured status requirements under [T]itle II of the Act at all [relevant] times" (R. 15).

The ALJ next turned to the determination of whether Mr. Sanato was disabled within the meaning of Title XVI of the Act, 42 U.S.C. § 1614(a)(3)(A). After reviewing the evidence in the record, in light of the sequential evaluation assessment required by the Act's regulations, 20 C.F.R. Pt. 404.1520 and 416.920, the ALJ found that Mr. Sanato was not disabled at Step Three or at Step Five of the sequential evaluation. Consequently, the ALJ denied Mr. Sanato the SSI and DIB benefits he had requested.

The first step of the sequential evaluation involved the determination of whether the claimant, Mr. Sanato, had engaged in substantial gainful activity since his alleged disability onset date -- here February 10, 1994 (R. 15). The ALJ found that there was no evidence that Mr. Sanato had worked since the alleged onset date. The ALJ therefore concluded that there was "no basis for denying the claimant's application at the first step of the sequential evaluation" (R. 15).

The second step of the sequential evaluation required the ALJ to determine whether Mr. Sanato had a "severe" impairment or combination of impairments, which is defined as an impairment that significantly limits (has more than a minimal effect on) the physical or mental ability to do basic work

activities. *See* 20 C.F.R. §§ 404.1521. The ALJ found that Mr. Sanato’s impairments -- his physical disabilities (*i.e.*, a bad right hand, diabetes, hypertension and alcoholism with abstinence since August 15, 1995) and his psychological/mental disabilities (*i.e.*, personality disorder) – combined to produce limitations that significantly limited Mr. Sanato’s ability to perform basic work activities and therefore met the definition of “severe,” satisfying the second step of the sequential evaluation process (R. 15, 20).

The third step of the sequential evaluation required the ALJ to determine whether Mr. Sanato’s impairments met or equaled the level of severity contemplated for any impairment listed in Appendix 1 to Subpart P, Regulations No. 4. The ALJ found that Mr. Sanato’s impairments, alone and in combination, did not meet this standard, and therefore Step Three of the sequential evaluation process was not satisfied (R. 15-16). In particular, the ALJ found that Mr. Sanato did not satisfy the severity criteria for a personality disorder under Section 12.08, nor did he satisfy the mental retardation criteria (due to his IQ scores) set forth in Section 12.05(C) of the Listings. The ALJ also explained that the IQ test was of “questionable validity,” as Dr. Dalton had opined, given that the IQ score for Mr. Sanato “underestimated [his] true abilities” as reflected by his ability “to maintain employment at a semi-skilled level as an inventory control clerk for an extended period” (R. 15).

The fourth and fifth steps of the sequential evaluation required the ALJ to determine Mr. Sanato’s residual functional capacity, to ascertain whether he could perform his past relevant work (Step Four), and, if not, whether he nonetheless was able to perform other work existing in significant numbers in the national economy (Step Five). To make this determination, the ALJ was required to assess Mr. Sanato’s “residual functional capacity.” In so doing, the ALJ reviewed the objective medical evidence of Mr. Sanato’s alleged physical and medical limitations, including cirrhosis of the liver (caused by heavy drinking), depression, pain

in his lower extremities, and various pains in his neck, back and feet (R. 16). The ALJ found that when measured against the evidence as a whole, Mr. Sanato's allegations of disabling symptoms and limitations were not entirely credible (R. 21).

With regard to his alcoholism, the ALJ noted that Mr. Sanato claimed to have stopped drinking after gall bladder surgery and inpatient treatment at Gateway in August 1995 (R.17). The ALJ noted that the various pains of which Mr. Sanato complained, which he attributed to his unmedicated diabetes, were not supported by the medical evidence. For example, although Mr. Sanato complained of numbness in his legs, extreme weakness, and an inability to walk any distance, medical examination revealed that although Mr. Sanato had some loss of pinprick sensation bilaterally in the lower extremities, "proprioception was within normal limits"; and "[p]ulses and reflexes remained intact" (R. 17). Moreover, "[w]ith the exception of some loss of pinprick sensation, a subjective finding, there were no other signs of neuropathy" and therefore, the medical examiner, Dr. Rios "opined that [Mr. Sanato's loss of feeling from the pinprick] was most likely related to marginal cooperation on the claimant's part rather than a disease process" (R. 17). The ALJ found that the evidence showed that Mr. Sanato's reported hip pain was attributable to the dislocation of his hip at the age of 10; and, although Mr. Sanato also reported severe cramping his toes, "[h]is tandem gait was ataxic," and "he was able to heel and toe walk and his pedal pulses were not diminished" (R. 17).

With regard to his depression, the ALJ noted that Mr. Sanato described his condition as "episodic" and lasting "for short periods of time" (R. 16). With regard to his overall mental condition, the ALJ found that Mr. Sanato had been diagnosed with a personality disorder with schizoid and passive-aggressive features, as well as a somatoform disorder (R. 17). The ALJ also found that Mr. Sanato had been

described by his medical examiners and his own self-assessments as depressed, angry, defensive, in poor control of his impulses; “unusual and odd behaving;” socially uncomfortable (*e.g.*, “[a]lthough alert and cooperative, he showed very little interest in communicating with the examiner. His speech was rapid and his affect superficial and constricted almost to the point of being blunt. He was evasive and vague and appeared to be quite uncomfortable with the situation”); with a “negative attitude toward women and life in general;” a “guardedness as if the claimant were trying to avoid disclosure;” and a low energy level characterized by “sleeping all the time” (R. 17-19). The ALJ also found that, although Mr. Sanato’s examiners concluded that he could not remember details, “there were other indications that he has no serious memory impairment, and that he had an intact remote and immediate memory”(R. 19, 179).

With respect to his intelligence, work experience and educational background, the ALJ concluded that the intelligence tests Mr. Sanato took using the Wechsler Adult Intelligence Scale, Revised (WAIS-R), did not yield scores that were consistent with his education (graduation from high school and some college level computer classes) and occupational history (computer inventory clerk). The ALJ credited the IQ examiner’s conclusion that Mr. Sanato’s scores of 65 verbal, 68 performance, and 64 full scale were probably not an “accurate reflection of the claimant’s capabilities” but rather were “due more to a deficit in his motivation to perform well” (R. 18).

The ALJ also reviewed records related to Mr. Sanato’s right hand surgery to repair the tendon lacerated by the stab wound, as well as his consequential inability to properly grasp with this hand (R. 16). The ALJ noted that although Mr. Sanato might have had some difficulty grasping and reaching with his right hand, there was no evidence that he had any trouble with his fine motor coordination (R. 18), and -- in any event -- Mr. Sanato was left-handed (R. 17). Furthermore, Mr. Sanato’s own testimony regarding the

difficulty he allegedly had using his right hand was inconsistent (R. 18). For example, in November 1996 he told Dr. Dalton he had difficulty getting a zipper started (R. 167), but he denied such limitations when seen by Dr. Rios in July 1997 (R. 204). Moreover, the ALJ observed that Dr. Leone noted that Mr. Sanato could perform both fine and gross manipulations bilaterally and he had no difficulty picking up small objects from a table, buttoning or unbuttoning or zipping his clothes (R. 18).

Upon examination of the record evidence, the ALJ found that despite Mr. Sanato's impairments, he had the residual functional capacity to perform light, unskilled, "work-related activities" with the following exceptions: "lifting more than 20 pounds occasionally or 10 pounds frequently or understanding, remembering, and carrying out complex job instructions" (R. 16, 18, 19, 21). *See also* 20 C.F.R. Pt. 404.1567-1568 and 416.967-968. That conclusion was based on the ALJ's finding that, "except for the brief period when he was recuperating from his gall bladder surgery, none of the doctors mentioned restrictions greater than those determined" by the ALJ in her decision (R. 19). For example, "[a]ccording to Dr. Rios the claimant's lifting, carrying, sitting and walking capacities" were "unimpaired" (R. 19), despite the limitations on reaching and grasping imposed by Dr. Rios (R. 19). The ALJ considered this limitation and concluded that these limitations did not conflict with the twenty pound lifting restriction, which was a limitation on gross handling (R. 19). The ALJ found that those limitations were not "enough evidence from which to conclude that the claimant had fine motor limitations" (R. 19).

The ALJ also found that there was not enough evidence to conclude that Mr. Sanato had diabetic and/or alcoholic neuropathy which would prevent him from standing and/or walking for a significant part of the day (R. 19). The ALJ further concluded that Mr. Sanato's mental and psychological impairments also did not support work restrictions. In so finding, the ALJ noted that there were "various references to

uncooperative behavior in the record” (*e.g.*, Dr. Rios’ concluded that loss of pinprick sensation was due to poor cooperation on testing; Dr. Dalton noted a “guardedness as if the claimant were trying to avoid disclosure”). Moreover, the ALJ observed that Mr. Sanato was “distant” at the hearing (R. 19), and that Mr. Sanato had been diagnosed with a personality disorder. However, the ALJ concluded that there was no evidence that Mr. Sanato’s anger depression and/or other social limitations prevented work related activities for unskilled work (R. 19). For instance, Dr. Dalton “rated [Mr. Sanato’s] abilities with regard to the mental demands of work as good or fair in each category” (R. 19).³ The ALJ also noted, in particular, Mr. Sanato’s own acknowledgment that “when he was employed, he maintained adequate relationships with the other employees” (R. 169) and his depression was “episodic” and “very brief in duration” (R. 19). Thus, the ALJ concluded that there was no evidence to suggest that Mr. Sanato had “a bonafide depressive disorder that imposes any additional limitation” (R. 19).

Based on these findings described above, at Step Four the ALJ found that given his RFC, Mr. Sanato was not able to perform his past relevant work (R. 20). The ALJ also concluded that Mr. Sanato had not acquired any skills from past relevant work that would be transferrable to other skilled or semi-skilled jobs consistent with the residual functional capacity outlined above (R. 21). Recognizing that the burden shifted to the Commissioner at Step Five to identify other work Mr. Sanato could perform, the ALJ found that Mr. Sanato possessed the residual functional capacity, based on his exertional limitations and vocational profile (age, education and experience), to perform light, unskilled work, pursuant to Rule

³The ALJ did not define these terms, which we note because the labels “Good” and “Fair” as used in the SSI context have a specific meaning. The Medical Assessment of Ability to Do Work-Related Activities (Mental) defines “Good” as: “[a]bility to function in this area is limited but satisfactory; and “Fair” as “[a]bility to function in this area is seriously limited, but not precluded” (R. 178).

202.21 of the Medical-Vocational Guidelines. The ALJ believed that despite the absence of any vocational testimony concerning available unskilled light duty work, this Rule alone “established that such work exists in significant numbers” and thus “direct[ed] a finding of not disabled” (R. 20).

In sum, the ALJ found that Mr. Sanato was not under a “disability,” as defined in the Social Security Act at any time through the date of the decision. Consequently, Mr. Sanato was not entitled to SSI benefits, pursuant to 42 U.S.C. §§ 1602 and 1614 (a)(3)(A), or DIB benefits, pursuant to 42 U.S.C. §§ 216(i) and 223. The Appeals Council affirmed this decision in its entirety on August 20, 1999 (R. 4). The ALJ’s decision therefore became the final decision of the Commissioner (R. 4).

II.

In reviewing the Commissioner’s (here the ALJ’s) decision, this Court may not decide facts anew, reweigh the evidence, or substitute its own judgment for that of the Commissioner. *Herron v. Shalala*, 19 F.3d 329, 333 (7th Cir. 1994). Rather, the Court must accept findings of fact that are supported by “substantial evidence,” 42 U.S.C. § 405 (g) (1988), which is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Herron* 19 F.3d at 333 (*quoting Richardson v. Perales*, 402 U.S. 389, 401 (1971)). Where conflicting evidence allows reasonable minds to differ, the responsibility for determining whether a claimant is disabled falls upon the Commissioner (or ALJ), not the courts. *Herr v. Sullivan*, 912 F.2d 178, 181 (7th Cir. 1990). *See also Stuckey v. Sullivan*, 881 F.2d 506, 509 (7th Cir. 1989) (the ALJ has the authority to assess medical evidence and give greater weight to that which the ALJ finds more credible). The Court is limited to determining whether the Commissioner’s final decision is supported by substantial evidence and based upon proper legal criteria. *Erhart v. Secretary of Health and Human Service*, 969 F.2d 534, 538 (7th Cir. 1992).

Of course, this does not mean that the Commissioner (or ALJ) is entitled to unlimited judicial deference. The ALJ must consider all relevant evidence and may not select and discuss only that evidence that favors his or her ultimate conclusion. *Herron*, 19 F.3d at 333. And, although the ALJ need not evaluate in writing every piece of evidence in the record, the ALJ's analysis must be articulated at some minimal level and must state the reasons for accepting or rejecting "entire lines of evidence." *Id.* See also *Young v. Secretary of Health and Human Services*, 957 F.2d 386, 393 (7th Cir. 1992) (ALJ must articulate reason for rejecting evidence "within reasonable limits" if there is to be meaningful appellate review); *Guercio v. Shalala*, No. 93 C 323, 1994 WL 66102, *9 (N.D. Ill. 1994) (ALJ need not spell out every step in reasoning, provided the ALJ has given sufficient direction that the full course of the decision may be discerned) (citing *Brown v. Bowen*, 847 F.2d 342, 346 (7th Cir. 1988)).

The Social Security Regulations prescribe a sequential five-part test for determining whether a claimant is disabled. See 20 C.F.R. § 404.1520 (1998). The ALJ must consider: (1) whether the claimant is presently unemployed; (2) whether the claimant has a severe impairment or combination of impairments; (3) whether the claimant's impairment meets or equals any impairment listed in the regulations as being so severe as to preclude substantial gainful activity; (4) whether the claimant is unable to perform his past relevant work; and (5) whether the claimant is unable to perform any other work existing in significant numbers in the national economy. See 20 C.F.R. § 404.1520 (1998); see also *Young*, 957 F.2d at 389. A finding of disability requires an affirmative answer at either Step Three or Step Five. A negative answer at any step (other than Step Three) precludes a finding of disability. *Id.* The claimant bears the burden of proof at Steps One through Four, after which the burden of proof shifts to the Commissioner at Step Five. *Id.* The ALJ's analysis at Step Five typically involves an evaluation of the claimant's residual functional

capacity (“RFC”) to perform a particular category of work (*i.e.* sedentary, light, medium, heavy or very heavy work), as well as the availability of such work in the national economy.

In this case, Mrs. Sanato, on behalf of her deceased son, claims that reversal with an award of benefits is required because the Commissioner, by adopting the ALJ’s conclusions, made several errors in finding Mr. Sanato not disabled under the Act, namely: (1) the ALJ “erred in rejecting Mr. Sanato’s IQ Scores of 64, 65 and 68” in light of the evidence in the record regarding Mr. Sanato’s work history, and she consequently failed to find that Mr. Sanato’s impairments meet Listing 12.05C, which constitutes a *per se* disability under the Act at Step Three; and (2) the ALJ failed to meet her burden of proof at Step Five of the sequential evaluation process because she was not entitled to rely upon the medical-vocational guidelines to make a non-disabled finding, given the evidence of Mr. Sanato’s non-exertional impairments. We address each of these arguments below.

A. Mr. Sanato’s IQ Scores.

The plaintiff claims that the ALJ erred in rejecting Mr. Sanato’s IQ scores of 64, 65 and 68 (Pl.’s Mem. at 9-10). In particular, the plaintiff argues that “[i]f Mr. Sanato had a valid IQ of between 60 and 70 and a physical or other mental impairment imposing additional and significant work-related limitation of function[,] he would meet the requirements of Listing 12.05C and thus would be disabled pursuant to the Social Security regulations. 20 C.F.R. Pt. 404.1520(d); 20 C.F.R. Pt. 404, Subpart P, Appendix 1, Listing 12.05” (Pl.’s Mem. at 10). The government argues that the ALJ’s rejection of Mr. Sanato’s IQ scores is supported by Dr. Dalton’s opinion regarding those scores, and that plaintiff’s disagreement with the weight to be given Dr. Dalton’s opinion is not a valid basis on which to reverse the ALJ’s decision. We agree.

In concluding that Mr. Sanato's IQ scores, together with his other exertional and non-exertional impairments, did not satisfy the criteria of Listing 12.05(C), and therefore rejecting Mr. Sanato's claim of disability at Step Three, the ALJ noted that Dr. Dalton, who gave Mr. Sanato the IQ test, believed Mr. Sanato's scores were "inconsistent with his educational and occupational history" (R. 170). Dr. Dalton noted that "there may have been a deficit in his motivation to perform well" and he "doubt[ed] that the obtained scores provide[d] an accurate reflection of his capabilities" (R. 170). Dr. Dalton's opinion found support in the fact that while working as an inventory clerk, Mr. Sanato was able to complete computer courses to aid him in that job function (R. 170).

The Court may not quarrel with the weight the ALJ chose to give to Dr. Dalton's opinion, so long as that opinion constitutes substantial evidence for the ALJ's finding -- which, as explained above, it does. The Court concludes that the ALJ's finding regarding Mr. Sanato's IQ scores is supported by substantial evidence, and thus will not be disturbed. We therefore move on to plaintiff's arguments regarding the ALJ's burden at Step Five.

B. The Step Five Burden of Proof.

The plaintiff argues that the ALJ's Step Five decision was erroneous because the ALJ failed to prove that Mr. Sanato could perform a substantial number of jobs in the national economy. The plaintiff contends that Mr. Sanato had "serious limitations in several areas of mental health functioning" and thus suffered from severe non-exertional limitations. The plaintiff further contends that, in light of these severe non-exertional limitations, the ALJ was not entitled to direct a finding of "not disabled" at Step Five by using the medical vocational guidelines, 20 C.F.R. Pt. 404, Subpt. P, App. 2 (the "grid"), "without the testimony of a vocational expert" (Pl.'s Mem. at 12).

Non-exertional limitations or impairments are defined as “certain mental, sensory, or skin impairments” or “impairments [which] result solely in postural and manipulative limitations or environmental restrictions.” 20 C.F.R. Pt. 404, Subpt. P, App. 2, Section 200.00(d). *See also* 20 C.F.R. Pt. 404.1569a. Examples include limitations on seeing or hearing, limitations on sitting, environmental restrictions (pollutants, humidity, temperature changes), alcoholism, mental disorders (depression, hysteria, anxiety), fatigue, limitations on attention or concentration, and loss of bilateral manual dexterity.

The plaintiff correctly points out that once the ALJ found that Mr. Sanato could not perform his past-relevant work at Step Four, the burden of proof switched to the Commissioner to prove that a substantial number of jobs existed in the national economy that Mr. Sanato could perform with his exertional residual functional capacity, in spite of his non-exertional limitations. *See, e.g., Bapp v. Bowen*, 802 F.2d 601, 603 (2d Cir. 1986); *see also Herron v. Shalala*, 19 F.3d 329, 337 n.8 (7th Cir. 1994). However, “the fact that a claimant suffers from a non-exertional impairment does not . . . immediately preclude utilization of the grid. ‘Before reaching the conclusion that the grid will not be applied because [the] claimant alleges non-exertional limitations, those non-exertional limitations must be severe enough to restrict a full range of gainful employment at the designated level.’” *Nelson v. Secretary*, 770 F.2d 682, 685 (7th Cir. 1985). *See also Kirk v. Secretary*, 801 F.2d 794, 796 (6th Cir. 1986) (mere possibility of non-exertional impairment insufficient to preclude use of grid); SSR 83-14 (*citing* 20 C.F.R. Pt. 404, Subpt. P, App. 2 (Section 200.00(e)(2))).

If the non-exertional impairments are severe enough to limit work performance at the exertional RFC, then the ALJ may not use the grid to direct a finding of “not disabled” at Step Five, but instead must make a “nonguideline determination,” by analyzing all the relevant evidence in the record in light of the

Appendix 2 grid. In this situation, the rules in Appendix 2 serve only as a framework for consideration of how much the individual's RFC work capability is diminished by the non-exertional limitations. *See* SSR 83-14. *See also* *Kirk*, 667 F.2d at 528; *Nelson*, 770 F.2d at 685 (*quoting* *Kirk*, 667 F.2d at 537); 20 C.F.R. § 1569a(c) and (d). To make that determination, the ALJ must first determine the claimant's RFC, and then must determine whether the non-exertional impairments are "severe" -- meaning, that these impairments limit the performance of a wide or full range of work at the designated RFC level. *Nelson*, 770 F.2d at 685.

In other words, when non-exertional limitations are present, the Commissioner has the burden of establishing by "reliable evidence" that the non-exertional limitations did not significantly limit the range of work permitted by the claimant's exertional limitations. *See Shelman v. Heckler*, 821 F.2d 316, 321 (6th Cir. 1987). In determining whether there is "reliable evidence" the Court must assess whether the ALJ determined "in a responsible manner" whether non-exertional impairments would interfere with the type of jobs claimant could perform at an exertional level. *Cummins v. Schweiker*, 670 F.2d 81, 84 (7th Cir.1982). Despite the Commissioner's Step Five burden, courts must give the Commissioner the deference due under the "substantial evidence" standard, meaning they must not second guess a reasonable finding. *See, e.g., Mullins v. Heckler*, 836 F.2d 980, 985 (6th Cir. 1987) (court upheld ALJ's use of grid despite plaintiff's claim of severe non-exertional impairment because medical evidence did not support claimant's assertion). If this burden is met, there is no Step Five issue regarding use of the grid. If this burden is not met, then the ALJ is obligated to look beyond the grid to other reliable evidence in the record to substantiate the ultimate disability determination.

The plaintiff makes detailed challenges to each of the ALJ's findings regarding Mr. Sanato's alleged non-exertional limitations, namely, plaintiff's: (1) decreased vision; (2) reaching and grasping limitations with his right hand; (3) leg pain, fatigue, low energy and depression; and (4) mental impairments. *See* SSR 83-14 (reaching, grasping, fingering, bilateral manual dexterity, vision, and mental functions such as behavior, affect, thought, memory, orientation and contact with reality are all listed as non-exertional functions). Plaintiff asserts that the ALJ erred in finding that Mr. Sanato's non-exertional limitations were not severe, and that the ALJ's Step Five determination that Mr. Sanato could perform unskilled work and (based on the grid) that such work was available therefore cannot stand.

For the reasons set forth below, we reject the challenges to the ALJ's findings concerning non-exertional limitations, with one exception. We find that the ALJ did not sufficiently address the evidence of Mr. Sanato's mental impairments set forth in Dr. Dalton's opinion, or the extent to which those impairments might constrict the available number of jobs that Mr. Sanato could perform.

1. Vision Impairments.

At the threshold, the ALJ found that Mr. Sanato's claim of a significant vision impairment was not credible, because Mr. Sanato did not identify vision as an alleged disability until the hearing, and only after Dr. Rios's report, for the first time, provided any medical evidence that plaintiff had any vision deficit (R. 19; R. 203-204). Moreover, the ALJ found that the evidence showed Mr. Sanato's visual impairments were 20/50 in each eye, with correction, and thus was not sufficient to establish "some uncorrectable vision loss that affect[s] the claimant's ability to function" (R. 19). We agree that these findings are supported by substantial evidence, and thus reject each of plaintiff's challenges to them.

First, plaintiff argues that Dr. Rios's report indicated that Mr. Sanato's uncorrected vision was less than 20/200, and that "vision which cannot be corrected to better than 20/200 in the better eye is considered legal blindness." 20 C.F.R. Pt. 404.1581. However, this point is unpersuasive, as the evidence plainly indicates that Mr. Sanato's vision was correctable to at least 20/50.

Second, plaintiff claims that Mr. Sanato's vision was correctable only to 20/50, and that in Illinois, 20/50 eyesight would limit Mr. Sanato to driving during the day and thus reduce his ability to "perform certain activities" (Pl.'s Mem. at 13). This point is unpersuasive for two reasons. To begin with, the evidence establishes that Mr. Sanato's vision was *corrected* to 20/50, but it does not establish that it could not have been further corrected. Dr. Rios's report indicates that Mr. Sanato's eyesight was correctable to 20/50 "wearing eyeglasses." The record discloses that the eyeglasses used by Mr. Sanato were old (R. 166-67). It is not clear whether Dr. Rios had the plaintiff wear his own, older prescription glasses, or whether Dr. Rios performed an eye examination utilizing instruments that would correct Mr. Sanato's vision to the maximum extent possible. This ambiguity in the record cuts against plaintiff, since the burden was on Mr. Sanato to show, at Steps Two-Four, that he had a severe visual impairment that precluded him from performing his past relevant work and substantial gainful activity. *See Young v. Secretary*, 957 F.2d 386, 389 (7th Cir. 1992). Moreover, even if his vision was limited to 20/50, there is no evidence that Mr. Sanato's vision was any better when he had worked at previous jobs. And any limits his vision might have imposed on his ability to drive were irrelevant, because his drivers' license was suspended due to a conviction for driving under the influence of alcohol (R. 166). In light of the late assertion of this issue and the equivocal evidence offered by Mr. Sanato, we find no error in the ALJ's rejection of a visual impairment as a severe non-exertional limitation.

2. Reaching/Grasping Impairments.

The plaintiff contends that the ALJ failed to give sufficient weight to Mr. Sanato's reaching and grasping limitations as non-exertional impairments (Pl.'s Mem. at 13). The plaintiff points to Dr. Rios' report that Mr. Sanato had some weakness in the little, ring and index finger of his right hand, and was "unable to grasp properly" with that hand (R. 205).

While acknowledging this evidence, the ALJ found that Dr. Rios's July 1997 conclusions about Mr. Sanato's reaching and grasping limitations were not "fully support[ed]" by the other evidence in the record. Dr. Rios himself found that Mr. Sanato's dexterity was only "somewhat decreased," and that he could use his right hand to button, unbutton, use a zipper, and pick up small objects (R. 205). Those observations were consistent with the June 1995 medical evaluation by Dr. Leone (specifically cited by the ALJ in reaching her conclusion (R. 18)), which stated that Mr. Sanato could "perform gross and fine manipulations bilaterally" (R. 142), and Dr. Allian's August 1995 assessment that plaintiff had "full capacity" in finger dexterity, gross grasping or fine manipulations (R. 165). The ALJ also pointed out (R. 18) that Mr. Sanato's claimed limits were not fully credible because his statements to doctors about his hand had been "inconsistent." Mr. Sanato told Dr. Dalton that he could not use his right hand to zip his clothes (R. 166), but he told Dr. Rios that he could (R. 205).

At most, the medical evidence regarding the extent of the non-exertional limitations to Mr. Sanato's right hand was conflicting. And that is of no assistance to plaintiff here, because where conflicting evidence allows reasonable minds to differ, the responsibility for determining whether a claimant is disabled falls upon the ALJ, not the Court. *Herr v. Sullivan*, 912 F.2d 178, 181 (7th Cir. 1990). Because the ALJ relied on objective medical evidence and had a reasonable rationale for rejecting the severity of the limitation

claimed by Mr. Sanato, the Court finds that the ALJ's determination that Mr. Sanato did not have a severe non-exertional limitation related to grasping and reaching is supported by substantial evidence in the record and therefore within the ALJ's statutory discretion.

3. Leg Pain, Fatigue and Low Energy.

The plaintiff claims that the ALJ did not consider the evidence that Mr. Sanato had leg pain, fatigue and "low" energy, which required him to lay down and/or sleep most of the day (Pl.'s Mem. at 14). The plaintiff claims that each of these "symptoms" were the result of Mr. Sanato's diabetic condition and/or somatoform disorder. The plaintiff further claims that since diabetes and a somatoform disorder that produce low energy and fatigue are non-exertional limitations, the ALJ was required to determine the severity of these limitations, and the degree to which they limited his ability to sustain work activity at the unskilled level (*Id.*). The plaintiff argues that the ALJ "erred by not finding that [Mr. Sanato] suffer[ed] from a somatoform disorder" (Pl.'s Mem. at 8), and erred by not discussing these symptoms or the basis upon which she rejected them as disabling conditions (Pl.'s Mem. at 14). We disagree.

The ALJ noted that Mr. Sanato had a somatoform disorder (R. 17), but determined that this disorder constituted a medically determinable impairment (R. 20). The ALJ did specifically address Mr. Sanato's claims of low energy level and fatigue, the alleged symptoms of this disorder, when she assessed the validity of the results obtained from the Minnesota Multiphasic Personality Inventory ("MMPI"), given by Dr. Dalton. Like Dr. Dalton, the ALJ concluded that Mr. Sanato's complaints of low energy and sleeping all the time were "unusually . . . severe" and "of doubtful validity" (R. 18). The ALJ therefore refused to accept these alleged symptoms as limitations on Mr. Sanato's residual functional capacity (R. 18). Any failure by the ALJ to make a separate finding regarding Mr. Sanato's alleged somatoform

disorder is harmless, since the ALJ's findings regarding the symptoms of this disorder and their effect on Mr. Sanato's ability to perform unskilled work are supported by substantial evidence in the record, as cited in her findings.

Moreover, the ALJ found that the medical evidence failed to support any connection between Mr. Sanato's diabetic condition and his leg pain. The ALJ found that "there is not enough evidence from which to conclude that diabetic and/or alcoholic neuropathy precludes the claimant from standing and/or walking for a significant part of the day" (R. 19).⁴ That finding draws support from Dr. Rios's opinion that plaintiff showed no signs of diabetic neuropathy which could cause leg symptoms (R. 206). Accordingly, because the ALJ's findings are supported by substantial evidence, those findings will be accorded the deference due to them and will not be disturbed.

4. Mental Impairments.

The plaintiff contends that Mr. Sanato was disabled pursuant to Social Security Ruling ("SSR") 85-15, which indicates that a finding of "disabled" is warranted where the claimant cannot perform the basic mental demands of unskilled work because he is seriously limited in his ability to perform in various areas of mental health functioning (Pl.'s Mem. at 7-9).⁵ In particular, the plaintiff argues that the ALJ improperly rejected, without discussion or explanation, evidence by Mr. Sanato was "seriously limited" in several areas of mental health functioning, namely, the ability to interact with supervisors; to deal with the public; to deal

⁴"[M]ost light jobs -- particularly those at the unskilled level of complexity -- require a person to be standing or walking most of the workday." See SSR 83-14 (Examples of Evaluation Involving Combinations of Exertional and Non-exertional Limitations No. 2).

⁵As the plaintiff points out, "SSRs are interpretive rules intended to offer guidance to agency adjudicators. See *Lauer v. Bowen*, 818 F.2d 636, 639-40 (7th Cir. 1987). While they do not have the force of law, . . . the agency makes SSRs "binding on all components of the Social Security Administration." See 20 C.F.R. 402.35(b)(1). *Lauer v. Apfel*, 169 F.3d 489, 492 (7th Cir. 1999).

with work stresses; to understand, remember and carry out complex job instructions; to behave in an emotionally stable manner; and to demonstrate reliability (R. 178-79).

The government's rejoinder is that the ALJ's finding that Mr. Sanato could perform unskilled work is supported by substantial evidence in the record, namely, the report of Dr. Dalton (R. 166-179). The government reads Dr. Dalton's report to say that:

... plaintiff had good abilities to follow work rules, relate to coworkers, use judgment, function independently, maintain attention and concentration; carry out simple instructions; maintain personal appearances, and relate predictably in social situations. Dr. Dalton also said that plaintiff had serious limitations, but was not precluded from dealing with the public, interacting with supervisors, dealing with work stresses, behaving in an emotionally stable manner, and demonstrating reliability.

(Def.'s Mem. at 10). From this premise, the government contends that Dr. Dalton found that "plaintiff's mental impairments caused only moderate symptoms" (*Id.*).

We disagree with the government's reading of the import of Dr. Dalton's report. By rating Mr. Sanato's mental health as "fair," Dr. Dalton opined that Mr. Sanato was "seriously limited" in his ability to deal with the public, to interact with supervisors, to deal with work stresses, to understand, to remember and carry out complex job instructions, to behave in an emotionally stable manner and to demonstrate reliability. While a rating of "fair" indicates an opinion that Mr. Sanato was not entirely "precluded" from acting responsibly in those areas, we do not believe that the limitations described as imposing "serious" limitations may be recast by the ALJ as merely "moderate." Rather, the Court believes that "serious" limitations are more akin to what is described in the applicable regulations as a "severe" limitation, a conclusion which finds support in the fact that "severe" is listed as a synonym for "serious" in Merriam Webster's Collegiate Thesaurus.

The serious limitations that Dr. Dalton found in Mr. Sanato's mental ability to perform various work related activities would support a finding under SSR 85-15 that Mr. Sanato could not perform unskilled work. SSR 85-15 states that:

[t]he basic mental demands of competitive, remunerative, unskilled work include the abilities (on a sustained basis) to understand, carry out, and remember simple instructions; to respond appropriately to supervision, coworkers, and usual work situations; and to deal with changes in a routine work setting. *A substantial loss of ability to meet any of these basic work-related activities would severely limit the potential occupational base.* This, in turn, would justify a finding of disability because even favorable age, education, or work experience will not offset such a severely limited occupational base.

(Emphasis added). SSR 85-15 also states that "a finding of disability *can be* appropriate for an individual who has a severe mental impairment which does not meet or equal the Listing of Impairments, even where he or she does not have adversities in age, education or work experience." *See* SSR 85-15 (emphasis added).

We emphasize "can be" appropriate, because the finding of a severe limitation need not invariably dictate a finding of disability. The problem here is that the ALJ did not adequately address the evidence concerning the serious limitations found by Dr. Dalton. Although this Court is required to give the ALJ's findings deference, that deference is not due here, where the ALJ's decision dismissed Mr. Sanato's mental impairments in five sentences, by stating:

In terms of his personality disorder, he has been described as a little odd and angry and, admittedly, he was distant at the hearing. However, this is not enough to conclude that he cannot satisfy the requirements of "unskilled" work (R. 19) (citing regulations). The claimant himself acknowledged that, when he was employed, he maintained adequate relationships with the other employees . . . [and] . . . [while] he asserted that he is still prone to episodic depression, which he describes as being very brief in duration[.][t]here is no evidence to suggest that he has a bona fide depressive disorder that imposes any additional limitation.

(R. 19).

While it is true that the ALJ need not evaluate in writing every piece of evidence in the record, there is a “minimal articulation” requirement that demands a rationale for accepting or rejecting entire lines of evidence. *Herron v. Shalala*, 19 F.3d 329, 333 (7th Cir. 1994). Here, the ALJ did not even minimally articulate her reasons for disregarding the evidence by Dr. Dalton that Mr. Sanato had serious (or, “severe”) limits in his ability to perform fundamental work-related activities. The ALJ did not indicate whether she rejected Dr. Dalton’s opinion that Mr. Sanato had those limitations (and if so, why she rejected that opinion). And, if the ALJ accepted the Dalton opinion, she did not explain why those limitations failed to lead to a finding of disability.

We emphasize that even if Mr. Sanato had “serious” limitations that would not necessarily require a finding of disability, as the rating used by Dr. Dalton indicates that the limitations would not “preclude” Mr. Sanato from performing the job functions in question. But the ALJ would have to explain, at least minimally, the evidence supporting a finding that even with serious limitations there are unskilled jobs in significant numbers in the national economy that Mr. Sanato could have performed.⁶

The Court therefore concludes that the ALJ’s findings regarding Mr. Sanato’s non-exertional mental impairments may not stand. A Sentence 4 reversal and remand for further proceedings is warranted, so that the Commissioner may determine whether Mr. Sanato suffered from the mental

⁶Although the plaintiff argued in her brief that Dr. Benson (R. 137-39), Dr. Rios (R. 204-05), and Gateway Foundation (R. 162) made relevant findings regarding Mr. Sanato’s mental impairments, the Court’s review of those diagnoses does not lead us to conclude that those doctors made any specific findings that would be helpful to determining whether or not Mr. Sanato could perform “unskilled work” as defined in the regulations. Rather, those reports only generally describe Mr. Sanato’s personality as angry, with “poor impulse control” (R. 162); a flat affect, depressed mood (R. 205); and “disconnected” orientation (R. 138).

impairments indicated by Dr. Dalton's report, whether those impairments were "severe" and, if so, whether those severe impairments would have eroded the base of unskilled work to the point where Mr. Sanato could not have performed a significant number of jobs in the national economy, requiring a conclusion that he was disabled.

III

On remand, there are two additional issues that must be considered: one that has been raised here by the parties, and one that has not.

At the threshold, the ALJ must consider whether Mr. Sanato is a proper substitute plaintiff. By their silence on this question, the parties seem to assume this is so. However, the Court cannot determine on this record whether Ms. Sanato, the claimant's mother, is entitled (*i.e.*, has legal standing) to proceed with this appeal a "substitute party" and to receive any benefits that might be awarded to her deceased son. A review of the Social Security Act reveals that Ms. Sanato may be entitled to any benefits awarded because she is a "surviving parent" pursuant to 42 U.S.C. § 402(h). This subsection of the Act, however, has certain prerequisites that must be satisfied before the surviving parent is entitled to the benefits of his or her "fully insured" deceased child. In fact, this section of the Act indicates that both of Mr. Sanato's parents may be entitled to Mr. Sanato's benefits. *See* 42 U.S.C. § 402(h)(2)(B). There may also be other provisions of the Act that would give Ms. Sanato standing, but since those sections have not been cited or argued by the parties, the Court cannot make that determination.

For this reason alone, the Court could remand this case, pursuant to Sentence 6 of the Act, to the Appeals Council for rehearing and a determination on this issue. Although Sentence 6 is traditionally used to remand in light of new evidence not before the Commissioner at the time of the original decision, and

requires the petitioner to show “good cause” for the failure to bring this evidence to light, the Court believes that the intervening death of Mr. Sanato and Ms. Sanato’s application to proceed as a substitute party constitutes a changed circumstance that would warrant remand for briefing and consideration of the issues outlined above. *See Melkonyan v. Sullivan*, 501 U.S. 89, 97-100 (1991) (*citing* Senate Report, H.R. Rep. No. 96-100, p. 13 (1979), U.S. Code Cong. & Admin. News 1980, pp. 1277, 1336-1337) (“the court itself, on its own motion . . . , has discretionary authority ‘for good cause’ to remand the case back to the ALJ”). However, because we remand on the merits pursuant to Sentence 4, we decline to exercise the Court’s Sentence 6 authority.

In addition, the Commissioner will have to determine whether to offer (and the ALJ will have to decide whether to receive) vocational expert testimony. In general, when the grid applies, the ALJ need not submit the testimony of a vocational expert to prove the existence of jobs which the claimant is capable of performing, since a major purpose of the grid is to obviate the need for such testimony. *See Kirk v. Secretary*, 667 F.2d 524, 529 (6th Cir. 1981). However, if the ALJ finds on remand that Mr. Sanato suffered from severe non-exertional limitations, she will be foreclosed from placing exclusive reliance on the grid. *Nelson*, 770 F.2d at 684. The Seventh Circuit has noted that when the grid cannot be used, vocational expert testimony may be helpful, but it is not always required; rather the Commissioner may use any “reliable evidence” that would “persuade a reasonable person that the limitations in question do not significantly diminish the employment opportunities otherwise available.” *Warmoth v. Bowen*, 798 F.2d 1109, 1110 (7th Cir. 1986). *Accord Nelson*, 770 F.2d at 684-85; *Walker v. Bowen*, 834 F.2d 635, 641 (7th Cir. 1987). We leave it to the parties and the ALJ on remand to decide in the first instance whether vocational expert testimony will be helpful or necessary.

CONCLUSION

After review of the record and the Commissioner's decision, the Court finds that the Commissioner's decision must be reversed and remanded, pursuant to Sentence 4, 42 U.S.C. § 405(g), for further proceedings to make a Step Five finding regarding Mr. Sanato's non-exertional mental impairments. For these reasons, the Court grants the plaintiff's motion for summary judgment (doc. #16-1) and denies the government's cross-motion (doc. # 19-1). The Clerk of the Court is therefore directed to enter a final judgment pursuant to 42 U.S.C. § 405(g) (Sentence 4) and Fed. R. Civ. P. 58 and to terminate this case.

ENTER:

SIDNEY I. SCHENKIER
United States Magistrate Judge

Dated: August 17, 2000